IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BETTER BAGS, INC.	§	
Plaintiff,	§	
	§	
	§	
v.	§	CIVIL ACTION NO. ________
	§	
TEXAS QUALITY SEAFOOD, INC.	§	
	§	
Defendant.	§	JURY TRIAL DEMANDED

COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Better Bags, Inc. files this complaint ("Complaint") against Defendant Texas Quality Seafood, Inc.

I. THE PARTIES

1. Plaintiff Better Bags, Inc. ("Better Bags") is a corporation duly organized and existing under the laws of the State of Texas, with its principal place of business located in Houston, Harris County, Texas.

2. Defendant Texas Quality Seafood, Inc. ("Texas Quality") is a corporation duly organized and existing under the laws of the State of Texas having its principal place of business at 5315 Glenmont Dr, Houston, Texas 77081. Its registered agent is Henry Hoa Du, 119 Av J Rt 2 Box 373, Dickinson, Texas 77539. Service of process should be made by serving its registered agent Henry Hoa Du, 119 Av J Rt 2 Box 373, Dickinson, Texas 77539 or its President, Jerry Du, 5315 Glenmont Dr, Houston, Texas 77081.

II. NATURE OF ACTION AND JURISDICTION

3. This is an action for trademark infringement and unfair competition arise under the United States Trademark Act known as the Lanham Act, 15 U.S.C. § 1051 et seq., as well as the common law. This court has subject matter jurisdiction over this action under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. This court also has supplemental jurisdiction over all pendent state law claims asserted herein pursuant to 28 U.S.C. §§ 1367(a).

III. VENUE

4. Texas Quality has been and is actively doing business in the State of Texas and in this District.

5. This Court has personal jurisdiction over Texas Quality, and venue is proper in this District pursuant to 28 U.S.C. § 1391.

IV. FACTUAL BACKGROUND

6. Better Bags, Inc. is a Texas corporation with its headquarters located in Houston, Harris County, Texas. Better Bags has been in the business of manufacturing and marketing plastic bags for use in grocery stores for more than thirty (30) years. Texas Quality is in the business of distributing seafood and plastic bags.

7. Better Bags, Inc. has adopted the marks "Better Bags" and "BBI" in connection with plastic bags for food packaging and commercial use.

8. In 1999, Better Bags, Inc. filed an application to register the mark "Better Bags" with the United States Patent and Trademark Office for the exclusive use of the mark throughout the United States for use in connection with plastic bags for food packaging and commercial use. The federal registration for the mark issued on October 17, 2000, Registration Number 2,396,603 (the "Better Bags Mark"). This federal registration is constructive notice throughout the United States

of Better Bags, Inc.'s ownership, prima facie proof of validity of the trademark and the registration, as well as of Better Bags, Inc.'s exclusive right to use this trademark throughout the United States of America. 15 U.S.C. §§ 1072, 1115. This registration is valid and subsisting and has become incontestable under 15 U.S.C. §1065.

9. In 1996, Better Bags, Inc. filed an application to register the mark "BBI and Design" with the United States Patent and Trademark Office for the exclusive use of the mark throughout the United States for use in connection with plastic bags for food packaging and commercial use. The federal registration for the mark issued on January 6, 1998, Registration Number 2,127,472 (the "BBI Mark"). This federal registration is constructive notice throughout the United States of Better Bags, Inc.'s ownership, prima facie proof of validity of the trademark and the registration, as well as of Better Bags, Inc.'s exclusive right to use this trademark throughout the United States of America. 15 U.S.C. §§ 1072, 1115. This registration is valid and subsisting and has become incontestable under 15 U.S.C. §1065.

10. Among the products that Texas Quality sells are plastic bags with which infringing marks are used.

11. Better Bags has used and promoted its Better Bags Mark and BBI Mark. As a result of extensive use and promotion of these marks, Better Bags' marks have acquired a favorable reputation to consumers as an identifier and symbol of Better Bags and its products and goodwill. Accordingly, the Better Bags Mark and the BBI Mark are strong and are entitled to broad protection.

12. Better Bags continues to invest substantial sums in promoting its products offered under the Better Bag Mark and the BBI Mark marks.

13. Despite the limitless other marks that Texas Quality could have chosen, it wrongfully appropriated marks identical to the Better Bag Mark and the BBI Mark, without Better Bags' permission.

14. Texas Quality's wrongful activities are willful because it chose a trademark identical to the Better Bags Mark and the BBI Mark marks, even though the most rudimentary trademark search would have revealed Better Bags' federal registrations for the identical mark for identical types of products or services.

15. Recently, Better Bags discovered that Texas Quality has sold plastic bags for food packaging and commercial use bearing the marks "Better Bags Mark" and "BBI Mark" to Fiesta Mart supermarkets thereby infringing the Better Bags Mark and the BBI Mark.

16. Better Bags never gave permission to Texas Quality to use the Better Bags Mark or the BBI Mark.

V. COUNT ONE

(TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT)

17. Better Bags incorporates by reference all previous allegations in paragraphs 1 through 16 of this Complaint as if specifically set forth herein.

18. Texas Quality's unauthorized use of "Better Bags Mark" and "BBI Mark" as a mark falsely indicates to consumers that Texas Quality's bags originate from, are approved by, are sponsored by, are licensed by, or are affiliated with Better Bags or are otherwise associated with Better Bags's bags.

19. Texas Quality's unauthorized use of "Better Bags Mark" and "BBI Mark" in the manner described above is likely to cause confusion, to cause mistake, or to deceive customers and

potential customers of the parties by suggesting some affiliation, connection, or association of Texas Quality with Better Bags.

20. Texas Quality's actions constitute infringement of Better Bags' federal Trademark Registration Nos. 2,396,603 and 2,127,472 are unlawful under 15 U.S.C. § 1114. Better Bags has been damaged. In accordance with 15 U.S.C. § 1117(a), Better Bags seeks the recovery of Texas Quality's profits, Better Bags' damages, and costs of this action.

VI. COUNT TWO

(UNFAIR COMPETITION UNDER THE LANHAM ACT)

21. Better Bags incorporates by reference all previous allegations in paragraphs 1 through 20 of this Complaint as if specifically set forth herein.

22. Texas Quality's actions constitute unfair competition under 15 U.S.C. § 1125. Better Bags has been damaged.

VII. COUNT THREE

(COMMON LAW TRADEMARK INFRINGEMENT)

23. Better Bags incorporates by reference all previous allegations in paragraphs 1 through 22 of this Complaint as if specifically set forth herein.

24. Texas Quality's actions constitute trademark infringement in violation of the common law of the State of Texas. Better Bags has been damaged.

VIII. COUNT FOUR

(COMMON LAW UNFAIR COMPETITION)

25. Better Bags incorporates by reference all previous allegations in paragraphs 1 through 24 of this Complaint as if specifically set forth herein.

26. Texas Quality's acts, as described above, constitute unfair competition under the common law of the State of Texas. Better Bags has been damaged.

IX. COUNT FIVE

(COMMON LAW UNJUST ENRICHMENT)

27. Better Bags incorporates by reference all previous allegations in paragraphs 1 through 26 of this Complaint as if specifically set forth herein.

28. Texas Quality's actions constitute unjust enrichment in violation of the common law of the State of Texas. Better Bags has been damaged.

X. COUNT SIX

(REQUEST FOR PRELIMINARY INJUNCTION)

29. Better Bags seeks to enjoin Texas Quality and its agents and representatives from using the trademark on Texas Quality's commercial products during this suit because this activity infringes Better Bags's trademarks "Better Bags" (Registration Number 2,396,603) and "BBI and Design" (Registration Number 2,127,472).

30. There is a substantial likelihood that Better Bags will prevail on the merits. The subject marks have become incontestible. Texas Quality's use of identical marks is so blatant that Better Bags will undoubtedly prevail.

31. If the Court does not grant a preliminary injunction, Texas Quality will continue its activities that infringe Better Bags's trademarks.

32. Better Bags will likely suffer irreparable injury if the Court does not enjoin Texas Quality from using the marks because Better Bags's marks will suffer from dilution or generic use.

33. Texas Quality will not suffer undue hardship or loss as a result of the issuance of a preliminary injunction. The subject marks are owned by Better Bags and nothing prevents Texas Quality from using other marks or no marks for its bags.

34. Issuance of a preliminary injunction would not adversely affect the public interest.

35. Better Bags asks the Court to set this request for preliminary injunction for hearing at the earliest possible time and, after hearing the request, to issue a preliminary injunction against Texas Quality.

XI. DAMAGES

36. As a direct and proximate result of Texas Quality's conduct, Better Bags suffered the following damages.

a. Actual damages.

b. Lost profits.

37. Texas Quality knew that its unauthorized use of a marks confusingly similar to Better Bags's would result in a benefit to Texas Quality.

38. Texas Quality's unauthorized use of the Better Bags Mark and BBI Mark has unjustly enriched Texas Quality at the expense of Better Bags's reputation and goodwill.

XII. ATTORNEYS FEES

39. This is an exceptional case, and Better Bags is entitled to an award of attorney fees under 15 U.S.C. §1117(a).

XIII. JURY DEMAND

40. Better Bags demands a trial by jury on all issues so triable.

XIV. PRAYER FOR RELIEF

41. For these reasons, Plaintiff Better Bags, Inc asks for judgment against Defendant Texas Quality Seafood, Inc. for the following:

a. The Court order that Texas Quality, its officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with any of them, be preliminarily and permanently enjoined from the following:

(1) Using the Better Bags Mark and the BBI Mark, or any other confusingly similar designation, in connection with the promotion, advertising, or offering of plastic bags.

(2) Competing unfairly with Better Bags in any manner, including unlawfully adopting or infringing on Better Bags's Better Bags Mark and BBI Mark or adopting or using any other marks or designations that are confusingly similar to Better Bags's Better Bags Mark and BBI Mark.

(3) Conspiring with, aiding, assisting, or abetting any other person or entity in engaging in any of the activities referred to in subparagraphs (1) and (2) above.

b. The Court order seizure of goods and counterfeit marks, the means of making marks, and records documenting the manufacture, sale, or receipt of things involved in the use of the counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services, as provided under 15 U.S.C. §1116(d).

c. The Court order Texas Quality, its officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with any of them, to deliver for destruction, or show proof of destruction of, all products, labels, signs, prints, packages, wrappers, receptacles, and advertisements, and any other materials in their possession or control that depict or reference the Better Bags Mark and BBI Mark or any other confusingly or substantially similar mark, and all materials or articles used for making or reproducing the same, as provided under 15 U.S.C. §1118.

d. Texas Quality file with the Court and serve on Better Bags, within 30 days after the entry and service on Texas Quality of an injunction, a report in writing and under oath stating in detail the manner and form in which Texas Quality has complied with the provisions of subparagraphs (a) through © above.

e. Better Bags recover all damages it has sustained as a result of Texas Quality's infringement and unfair competition.

f. Better Bags be awarded treble damages, as provided under 15 U.S.C. §1117(b).

g. An accounting be directed to determine Texas Quality's profits resulting from its infringement and unfair competition and that the profits be paid over to Better Bags, increased as the Court determines is appropriate to the circumstances of this case, as provided under 15 U.S.C. §1117(a).

h. The Court declare this case an exceptional case and award Better Bags {his/her/its} reasonable attorney fees for prosecuting this suit, as provided under 15 U.S.C. §1117(a).

i. Better Bags recover its costs of this suit, as provided under 15 U.S.C. §1117(a).

j. Better Bags recover prejudgment and post judgment interest, as authorized by law.

k. Better Bags have all other relief the Court deems appropriate.

DATED: March 17, 2017

Respectfully submitted,

/s/ Anastassios Triantaphyllis
Anastassios Triantaphyllis
Attorney-in-charge
Texas Bar No. 20213600
Southern District of Texas Bar No. 16413
The Civil Justice Center
112 E. 4th Street
Houston, Texas 77007
(713) 240-7650 telephone
(713) 520-8991 telecopier
Email: tasso@triantaphyllis.com
Counsel for Plaintiff Better Bags, Inc.